

# NOMINATION OF LESLIE SOUTHWICK

Mr. HATCH. Mr. President, as the discussion over immigration reform demonstrates, this body confronts tough issues and can find itself embroiled in some contentious debates.

Over the years, it has not been uncommon to see judicial appointment debates at the top of the list of contentious debates. And during those debates, we have seen a lot of tactics and methods used.

But some tactics are simply wrong.

Some methods are simply inappropriate.

There are some means which no ends can justify. Some of these wrong tactics, inappropriate methods, and illegitimate means have been used to attack the nomination of Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit.

If we care about the integrity of this body and the good of the judicial branch, if we really believe that there is something more important than raw ideological politics, we should reject this attack on this good man and confirm his nomination.

Judge Southwick, who served for a dozen years on the Mississippi Court of Appeals, has received a unanimous well qualified rating from the American Bar Association.

He has the strong support of his home State Senators, both of whom are Senior Members.

He would fill a judicial emergency vacancy.

And though it has been obscured by all the hyperbolic, vitriolic, and over-the-top rhetoric now thrown about, the Judiciary Committee just months ago approved without objection Judge Southwick's nomination. Now, for whatever reason, the nomination is in limbo—first it is on the committee agenda without action and now not on the committee agenda at all.

The committee looked at the same qualifications, the same record, the same man with the same character, and found no objection whatsoever.

The only difference—which is really a distinction without a difference—is that Judge Southwick was then nominated to the U.S. District Court but now has been nominated to the U.S. Court of Appeals.

The disturbing tactics being used against this nominee are certainly not new, and they are no more legitimate or persuasive now than when they have been used against other nominees in the past.

Frankly, I am amazed that anyone finds them credible, let alone persuasive.

Judge Southwick served on the Mississippi Court of Appeals for 12 years.

It is not credible to focus only on a few cases among the 7,000 in which he participated and the nearly 1,000 opinions he wrote.

It is not credible to focus only on the results of those few cases, ignoring the facts and the law.

It is not credible to demand that judges render decisions that serve certain political interests, whether or not the law actually requires that result.

It is not credible to attack Judge Southwick for phrases or language in opinions he did not write.

It is not credible to ignore the limitations imposed on appeals court judges by the standard of review they must follow.

It is not credible to say that a judicial ruling against a particular party amounts to a judge's personal hostility against a group to which that party might belong.

These are some of the misleading tactics that we have seen used against judicial nominees in the past and are being used against Judge Southwick now.

These tactics are simply not credible, and I am amazed that my Democratic colleagues seem to be going along with them.

One of the sure signs that such illegitimate tactics are in play is that they result in a distorted, twisted caricature of a nominee that those who have long known and worked with him simply do not recognize.

Richard Roberts, former president of the Mississippi bar, for example, says that no other lawyer in the State is as qualified as Judge Southwick to serve on the Fifth Circuit.

According to Phillip McIntosh, associate dean at the Mississippi College School of Law where Judge Southwick now teaches, a politically and racially diverse faculty unanimously approved Judge Southwick for a faculty position with no question about his integrity, fairness, or impartiality.

A. La'Verne Edney, an African-American partner at Judge Southwick's former law firm, clerked for him on the Mississippi Court of Appeals.

He says that Judge Southwick applied the law fairly without regard to the parties' affiliation, color, or stature.

These and other colleagues and partners of Judge Southwick know him best.

I can only imagine their shock and confusion over the wildly derogatory and extreme descriptions offered by Judge Southwick's Washington-based critics.

I can only imagine the reaction by those who know Judge Southwick when those who do not know him make such claims without knowing what they are talking about.

I think my colleagues would agree that the American Bar Association has never been accused of a conservative bias.

And I think we would all agree that the ABA conducts perhaps the most exhaustive and thorough evaluation of judicial nominees.

The ABA looks at the whole record; the ABA interviews dozens of people in each case.

Let me remind everyone that the previous nominee to this very same Fifth

Circuit position ran into trouble when the ABA rated him not qualified.

My Democratic colleagues thought that was the most insightful, thorough, accurate, and definitive evaluation ever done on any nominee to any position anywhere.

The same ABA has unanimously given Judge Southwick its highest well qualified rating.

That means, according to the ABA's own description of its rating criteria, that Judge Southwick gets the highest marks for such things as compassion, open-mindedness, freedom from bias and commitment to equal justice.

So here is the choice we face.

On the one side, critics who do not know and have not worked with Judge Southwick look only at the results of just a few cases and claim Judge Southwick has hostile views on issues such as race, when there is no indication by anybody in Mississippi or otherwise that he has any such hostility.

On the other side, the ABA and those who do know and have worked with Judge Southwick look at his entire record and gave him the highest marks for compassion, open-mindedness, freedom from bias and commitment to equal justice under the law.

These two radically different pictures of this nominee cannot both be true.

I think the tactics and standards used by Judge Southwick's critics are wrong and illegitimate, and the conclusions about him based on those tactics are simply not credible. I think they know that.

And they certainly do not justify doing an about-face and voting against a nominee who, just months ago, received the Judiciary Committee's unanimous support.

Illegitimate tactics leading to less than credible conclusions do not justify disregarding the judgment of our colleagues, the Senators from Mississippi, who are this nominee's home State Senators.

Let me close with one more point.

In their opposition letter, the Congressional Black Caucus says that we "should be impressed by the frequency with which Southwick's opinions and concurrences have been overruled." That is pure, unadulterated hogwash.

Judge Southwick authored 927 opinions and concurrences while on the Mississippi Court of Appeals and only 21 of them have been either reversed or even criticized by the Mississippi Supreme Court in 12 years. I don't know of many judges who have such an unblemished record.

I must say that I am indeed impressed by the frequency with which Judge Southwick's opinions and concurrences have been overruled.

I am very impressed with such a low reversal rate over such a long period of distinguished judicial service.

And I note that Kay Cobb, former presiding justice of the Mississippi Supreme Court, the court that reviewed Judge Southwick's decisions, has written with enthusiastic support of his nomination.

Justice Cobb, unlike Judge Southwick's critics, has known him for many years and highlights his attention to promoting fairness and equality.

Judge Southwick has served his community, volunteering with Habitat for Humanity since 1993.

He volunteered to serve his country in the Mississippi National Guard and by joining a line combat unit that served in Iraq.

Only months ago, the Judiciary Committee found Judge Southwick's qualifications and character sufficient to report his district court nomination without a single objection.

Judge Southwick today is the same man with the same qualifications, the same ability, the same character, and the same commitment to the rule of law.

He has the strong support of his home State Senators—both of whom are highly respected—and should be given the opportunity to serve on the Fifth Circuit.

The Judiciary Committee should report his nomination, and the Senate should confirm him, without delay, or a manifest injustice will have occurred and will led to even more antagonism between the two sides of this body.

We have been used to some of these tactics in the last 2 months of a President's tenure, maybe even the last 6 months, but hardly ever against a person of this man's qualifications, and then we have usually knocked that type of criticism down, as decent, honorable Senators should knock them down. Frankly, this President will serve for another year and a half. He has appointed a sterling, good man who deserves to be brought before the Senate and confirmed. I hope my colleagues will stop this tragedy and put this man on the court. He deserves it. He will be great on the court. He will be a person who will be fair and decent for everybody. I have every confidence in him.

I ask unanimous consent that the letters to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LAW OFFICES OF  
RICHARD C. ROBERTS III,  
Ridgeland, MS, June 5, 2007.

Re Leslie Southwick.

Hon. ARLEN SPECTER,  
*Ranking Member, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

DEAR SENATOR SPECTER: The issue of diversity seems to be the current focal point in the nomination process for the vacancy existing on the Fifth Circuit Court of Appeals. As a former President of the Mississippi Bar, I understand and appreciate the desire and need to have females and African-Americans serving in our federal judiciary, particularly when the candidates are from Mississippi. I venture to say, however, that no other lawyer in the State of Mississippi is as qualified for the Fifth Circuit position by virtue of education, experience, intellect, integrity and temperament as the Honorable Leslie H. Southwick.

I have known Judge Southwick personally since 1977. I am sure you are well aware of

Judge Southwick's outstanding legal career, and his exemplary service to our country in The Department of Justice and as Staff Judge Advocate for the 155th Brigade Combat Team in Iraq. I would venture to guess that his fellow judges have also expressed their written support of his untiring efforts and abilities as a judge on our Mississippi Court of Appeals.

The purpose of my letter, however, is to emphasize Judge Southwick's personal virtues. He is simply one of the finest, most decent, kind, humble, and fair-minded persons I have ever known regardless of race or gender.

Judge Southwick reminds me in so many ways of Judge Charles Clark, who served for many years as Chief Judge for the Fifth Circuit Court of Appeals, and for whom Judge Southwick clerked before entering the private practice of law. When Judge Clark served on the Court of Appeals, he had it all—intellectual ability, superb personal and organizational skills, work ethic, commitment, integrity, and a wonderful sense of humor. I am sure you remember Judge Clark. Judge Leslie Southwick is cut from the exact same cloth.

Seldom will the Judiciary Committee have the opportunity to make an appointment which will have such a lasting effect on the integrity of our federal judicial system in Mississippi and the other states within the Fifth Circuit, and to solidify the reputation it justifiably enjoys as the protector of our rule of law, the civil rights of all citizens. Please do not miss this opportunity to confirm the nomination of Judge Leslie Southwick.

With highest regards, I am

Respectfully yours,

RICHARD C. ROBERTS, III.

MISSISSIPPI COLLEGE,  
June 4, 2007.

Re The Honorable Leslie Southwick.

Hon. ARLEN SPECTER,  
*Ranking Member, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

DEAR SENATOR LEAHY: I am writing to you to express my strong support for the nomination of Leslie Southwick to the Fifth Circuit Court of Appeals. I have known Judge Southwick for several years while he has been an adjunct professor and visiting professor at Mississippi College School of Law. As Associate Dean, hiring of adjuncts comes under my responsibilities for the law school. We have been honored to have him on our faculty and look forward to a long and beneficial relationship with him. Our students likewise hold Judge Southwick in highest regard.

Judge Southwick is a man of highest integrity, honor and intellect. As a judge on the Mississippi Court of Appeals he scrupulously did his judicial duty in following the law in his judicial opinions. I am greatly disappointed that some have taken the opportunity to try to score political points by characterizing Judge Southwick as intolerant or having "very fixed, right-wing world view," seeking to imply that he would not be fair and impartial in applying the law. In my personal and professional dealings with him, I can attest to his fine character. I have not the slightest doubt regarding his impartiality and commitment to fairness.

Judge Southwick would make an outstanding judge for the Fifth Circuit. I know that he will uphold the law and apply it regardless of his personal view on a particular subject. He is a very thoughtful man, a true scholar. I also know that he is not racist and does not hold racist views. Such an allegation is ludicrous, insulting, and without foundation.

As an example of the regard with which Judge Southwick is held by the law faculty at Mississippi College, he was offered a position as a visiting faculty member following his resignation as a judge for the Mississippi Court of Appeals and pending the approval of his nomination to the Fifth Circuit. The suggestion to make this offer was made by one of our faculty members, and the recommendation was unanimously approved by our faculty. We have a politically and racially diverse faculty, but not one note of concern about Judge Southwick's integrity, fairness, or impartiality was sounded. His appointment to our faculty was strongly supported by all of our faculty members. I might even mention that his teaching partner for Trial Practice this past semester is an African American attorney and former Mississippi Circuit Court judge, and whom Judge Southwick personally recruited to partner with him for the course.

I hope that you will support the nomination of this outstanding man to the Fifth Circuit. He is an exceptional candidate and deserving of confirmation.

Sincerely,

PHILLIP L. MCINTOSH,  
*Associate Dean and Professor of Law.*

BRUNINI, ATTORNEYS AT LAW  
TRUSTMARK BUILDING,  
Jackson, MS, June 5, 2007.

Re Judge Leslie Southwick Nomination.

Hon. ARLEN SPECTER,  
*Ranking Member, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

DEAR SENATOR SPECTER: I am an African-American partner at the law firm of Brunini, Grantham, Grower & Hewes, PLLC, where Judge Southwick was once a member. I believe in fairness for all people and salute our leaders for giving their lives to assure that fairness. While I share the sentiments of other African-Americans that the federal judiciary needs to be more diverse, I believe that Judge Southwick is imminently qualified for the United States Fifth Circuit Court of Appeals and write in support of his nomination.

I met Judge Southwick during my third year of law school when I interned with the Court of Appeals of Mississippi. That internship allowed me an opportunity to work with most of the Judges on the bench at that time. I was most impressed with Judge Southwick because of his work ethic and his serene personality. When I finished law school in 1996, I believed that my chances for landing a clerkship were slim because there was only one African-American Court of Appeals judge on the bench at the time and there were very few Caucasian judges during the history of the Mississippi Supreme Court or the Court of Appeals (which was fairly new) who had ever hired African-American law clerks. In spite of the odds, I applied for a clerkship. Judge Southwick granted me an interview and hired me that same day. While Judge Southwick had many applicants to choose from, he saw that I was qualified for the position and granted me the opportunity.

During my tenure as clerk with the Court, Judge Southwick thought through every issue and took every case seriously. He earned a reputation for his well thought out opinions and his ability to produce the highest number of opinions in a term. It did not matter the parties' affiliation, color, or stature—what mattered was what the law said and Judge Southwick worked very hard to apply it fairly. Judge Southwick valued my opinions and included me in all of the discussions of issues presented for decision. Having worked closely with Judge Southwick, I have no doubt that he is fair, impartial, and has all of the other qualities necessary to be an

excellent addition to the United States Court of Appeals for the Fifth Circuit.

In addition to serving our State, Judge Southwick has also honorably served our country. During his mission to Iraq in 2005, Southwick found the time to write me often to let me know about his experiences there. Upon his return to the United States, Judge Southwick shared with others his humbling experience serving our country. It is clear from his writings and speaking that he served with pride and dignity.

Other the years, Judge Southwick has earned the reputation of being a person of high morals, dignity, and fairness. It is unfortunate that there are some who have made him the chosen sacrifice to promote agendas and have set out to taint all that Judge Southwick has worked so hard to accomplish. I am prayerful that those efforts will not preclude Judge Southwick from serving as our next Judge on the United States Court of Appeals for the Fifth Circuit.

If additional information is needed, please feel free to contact me.

Yours truly,

A. LA'VERNE EDNEY.

SUPREME COURT OF MISSISSIPPI,  
Jackson, MS, June 5, 2007.

Re Judge Leslie H. Southwick.

Hon. ARLEN SPECTER,

Ranking Member, Committee on the Judiciary,  
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: This letter is enthusiastically written to urge you and the Committee to confirm Leslie H. Southwick to serve on the Fifth Circuit Court of Appeals. I've known him for many years and I'm honored to give him my highest recommendation, without reservation. In every way he is worthy to serve.

Judge Southwick's scholarship and character are stellar. The opinions he wrote during his ten years on the Mississippi Court of Appeals reflect his thoroughness and fairness, as well as the depth of his knowledge and the quality and clarity of his reasoning and writing.

In every aspect of his legal career and life in general, Leslie Southwick has excelled. He has a long and consistent record as a devoted family man, a courageous military leader, an accomplished author, and an excellent appellate judge. His awareness and attention to promoting fairness and equality with regard to race and gender are exemplary.

Our country needs conscientious and independent judges of impeccable integrity and I cannot think of anyone who better qualifies for this appointment!

Sincerely,

KAY B. COBB (1999-2007)

Mr. HATCH. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MENENDEZ. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### IMMIGRATION

Mr. MENENDEZ. Mr. President, from my State of New Jersey and that part of the State in which I live, we can almost touch Lady Liberty. She is that close to us from a State park called Liberty State Park, an area I had the unique privilege of representing in the House of Representatives for 13 years

and an area I still represent as the junior Senator from New Jersey, an area I have fond memories of because of the power of what it means. From that same park we can cross a bridge and go to Ellis Island, a place to which millions came to America to start a journey, a journey that contributed enormously to its great promise, enormously to the great country that it is today.

I rise to discuss the recent cloture vote on immigration with that context in mind. The Senate had a historic opportunity to move forward today with comprehensive immigration reform that truly secured our borders, that realized the economic realities of our time and allowed people the opportunity to come out of the shadows into the light to earn their legalization.

Unfortunately, the Senate decided to maintain the status quo, a status quo of broken borders, that does not meet our economic challenges, and that permits human exploitation and trafficking to take place.

As someone who was part of the early negotiations back in March of this year on the question of immigration reform, I maintained then that the administration had leaped away from the largely bipartisan bill of last year that received 23 Republican votes and 39 Democratic votes to a much more conservative, much more impractical, and a much more partisan proposal this year. I was unable to join several of my colleagues in what has become known as the grand bargain. I acknowledge and appreciate several of those who advocated, because we were only on the floor on immigration reform, truly a critical issue for this country, as a result of their leadership, colleagues such as Senators KENNEDY and SALAZAR and GRAHAM, to name a few, who truly believed in that opportunity; at the same time, because of the leadership of the majority leader, who was willing to take on one of the most contentious issues, an issue that has been contentious throughout our country's history. I have often remarked on the floor how on the question of immigration, it is interesting to have heard the language of those debates at different times in our history.

Ben Franklin referred to no longer being able to accept those who were coming to our shores in negative terms. He was talking then about the Germans. The former Governor of Massachusetts, in the early 1900s, said that, in fact, they are sending the most illiterate of their people to our shores. He was talking then about the Irish. In 1925, in an official report of the Los Angeles Chamber of Commerce, they said: We need the Mexicans because of their bending and crouching habits which the whites cannot attain themselves to in order to pick our produce. We had the Chinese exclusionary provisions.

So while this has always been a welcoming country, the debate has not been as welcoming. On that day when the "Grand Bargain" was announced, I

came to this Chamber to express my opposition to the deal that was announced because I believed it was deficient in some regard and to say that I would work to improve it. Looking back at what I said then, in light of today's vote, it was strikingly clairvoyant to me, to say the least.

I said on that day we must come together not as Democrats and Republicans or liberals and conservatives but as statesmen and, in doing so, honor the traditions of the Senate as a body that values reasoning, honest debate, and compromise over sound bites and talking points but especially over the politics of fear.

Unfortunately, today, the voices that appealed to that fear and the lowest common denominator won out. Only 12 of our Republican colleagues were willing to stand up and vote to invoke cloture, almost half of those who voted for last year's bipartisan immigration bill.

Only 12 Republican colleagues were willing to move forward, at least for the final essence of debates and amendments, and to a final vote, which is about half of those who voted last year for immigration reform.

Now, personally, I still had serious concerns about the direction of the bill, but I voted to keep it alive because I wanted to work to make it better and because I believe in comprehensive immigration reform as something that is in the national interest and national security of the United States and because America's promise and its security should not have been snuffed out by one single vote.

I said back on that day in May that I could not sign on to the agreement because it tore families apart, and it says to many they are only good enough to work here and give their human capital and slave but never good enough to stay here. But instead of responding to those erstwhile concerns from those of us willing to be supportive of comprehensive immigration reform, the appeal was constantly made to the right of the spectrum, to those who actually achieved some of the things they wanted in the bill but, obviously, never even intended to vote for comprehensive immigration reform—not even to vote to allow it to move forward. As it moved to the right, it got less and less support from the right.

Unfortunately, instead of working with those of us who were willing to not only work to improve this bill but also put our votes where our mouths were, they kept giving in to demand after demand from conservative Republicans, and in turn this bill moved further and further to the right.

In fact, at least two Members who were at the press conference on May 17 and got things included in the bill voted against keeping this process moving forward by voting against cloture today.

Ultimately, in my mind, this came down to a President and a party who was, once again, there for the photo